

DOCKET FILE COPY ORIGINAL

ANN BAVENDER*
KAREN L. CASSER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
RICHARD J. ESTEVEZ
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING*
KATHRYN A. KLEIMAN
EUGENE M. LAWSON, JR.
HARRY C. MARTIN
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY*
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

FLETCHERHEALD@msn.com

FRANK U. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D. P. SPEARMAN
(1936-1982)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYSS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*
WRITER'S NUMBER
(703) 812-

RECEIVED

JAN 31 1996

0480

January 31, 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: ET Docket No. 95-183
RM-8553
PP Docket No. 93-253

Dear Mr. Caton:

On behalf of the Fixed Point-to-Point Microwave Section of the Telecommunications Industry Association (the "Section"), we are filing an original and four (4) copies of attached Comments in the above-referenced proceeding.

If there are any questions, do not hesitate to contact the undersigned.

Respectfully submitted,

FLETCHER, HEALD & HILDRETH, P.L.C.

Leonard Robert Raish

Leonard Robert Raish
Of Counsel for Applicant

LRR:cej
Enclosures

No. of Copies rec'd
List ABCDE

044

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

**ORIGINAL
RECEIVED**

JAN 31 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Amendment of the)
Commission's Rules Regarding)
the 37.0-38.6 GHz and)
38.6-40.0 GHz Bands)

ET Docket No. 95-183
RM-8553

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding, 37.0-38.6 GHz)
and 38.6-40 GHz)

PP Docket No. 93-253

To: The Commission

**COMMENTS IN SUPPORT OF THE MOTION FOR STAY OF COMMCO, L.L.C.
PLAINCOM, INC. AND SINTRA CAPITAL CORPORATION**

The Fixed Point-to-Point Microwave Section of the Telecommunications Industry Association (the "Section"), pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. §1.41, hereby files comments in support of the Motion for Stay filed on January 16, 1996 by Commco, L.L.C., PLAINCOM, INC., and Sintra Capital Corporation (collectively referred to as "Petitioners"). Specifically, Petitioners have requested that the Commission immediately stay its interim freeze on the processing of mutually exclusive applications, including amendments thereto, to establish new facilities in the 38.6 - 40 GHz (hereinafter "39 GHz") frequency band. Petitioners' stay is requested pending action on their Petition for Reconsideration of the Notice of Proposed Rulemaking and Order, adopted December 15, 1995 in the above-captioned proceeding (hereinafter "39 GHz Order").

The Section represents the interests of manufacturers of microwave radio equipment. The Section has been actively involved in developing sharing rules for 2 GHz personal

communications service ("PCS") operators and microwave licensees. Additionally, the Section is deeply involved in the possible merging of Parts 21 and 94 of the Commission's Rules. Thus, the Section has a great deal of involvement in providing support microwave networks for cellular, and other commercial mobile radio service systems. Moreover, many of the Section's members have intimate knowledge of the fixed infrastructure needs of cellular and PCS service providers.

On September 1994, the Section filed a petition for rulemaking initiating the above-referenced proceeding (the "Petition"). Since the Petition was filed, the Section and its member companies have made it a point to follow closely the applications and plans of those companies seeking to develop 39 GHz point-to-point networks in numerous metropolitan areas across the country.

On December 5, 1995, the Section supplemented its Petition with information reflecting new developments in the 39 GHz industry. In particular, the Section noted that:

The vast majority of the [39 GHz] applicants have deep roots in the wireless industry, and have seemingly exhibited both patience and foresight. The Section therefore suggests the public interest will be well served if the Commission expedites the processing of all currently pending 39 GHz applications. Additionally, the Section believes that 39 GHz applicants should be allowed to continue implementing engineering solutions to resolve the few remaining mutual exclusivity conflicts among pending 39 GHz applications.


Supplement to Petition at 3.

The Section believes that the arguments raised by Petitioners' in their Request for Stay, particularly those regarding the Commission's obligations to avoid mutual exclusivity under Section 309(j)(6)(E) of the Communications Act of 1934, as amended, are compelling.

Therefore, for the reasons set forth therein, the Section hereby submits comments in support of the grant of Petitioners' Request for Stay.

Respectfully submitted

FIXED POINT-TO-POINT MICROWAVE
SECTION OF THE TELECOMMUNICATIONS
INDUSTRY ASSOCIATION


George M. Kizer, Chairman
Denis Couillard, Vice Chairman
Fixed Point-to-Point Microwave Section
Telecommunications Industry Association


Eric Schimmel, Vice President
Telecommunications Industry Association

OF COUNSEL:
Leonard Robert Raish
Fletcher, Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

Date: January 31, 1996
cej/lrr/lrr#4/TIA1.PLEADING